



ETHICS ISSUES

BRIAN L. TARBET, General Counsel

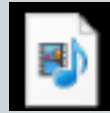
67-25-302. Restrictions on outside employment by executive branch employees.

- (1) An employee who is under the direction or control of an executive branch elected official may not engage in outside employment that:
 - (a) constitutes a conflict of interest;
 - (b) interferes with the ability of the employee to fulfill the employee's job responsibilities;
 - (c) constitutes the provision of political services, political consultation, or lobbying;
 - (d) involves the provision of consulting services, legal services, or other services to a person that the employee could, within the course and scope of the employee's primary employment, provide to the person; or
 - (e) interferes with the hours that the employee is expected to perform work under the direction or control of an executive branch elected official, unless the employee takes authorized personal leave during the time that the person engages in the outside employment.
- (2) An executive branch official shall be subject to the same restrictions on outside employment as a career service employee.
- (3) This section does not prohibit an employee from advocating the position of the state office that employs the employee regarding legislative action or other government action.

Enacted by Chapter 425, 2013 General Session

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MEMBERS OF THE PUBLIC CONTACTING STATE OFFICIALS



Failure to Communicate.mov

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NOTICE REQUIREMENTS ON CONFLICT WALLS

[1 a] Rule 1.10(f) does not appear in the ABA Model Rules. It is intended to recognize the inherent differences between an office of government lawyers and those in a firm, as defined in Rule 1.0(d). Notwithstanding the exclusion of an office of government lawyers from the provisions of Rule 1.10, all other conflicts rules, such as Rules 1.7, 1.8, and 1.11, must be fully satisfied on an individual-lawyer basis, and the group of government attorneys must, by adopting appropriate procedures, ensure that attorneys for whom there are individual conflict issues do not participate in and are screened from the particular representation. See Rule 1.0(l) for definition of “screened.”

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CONFLICTS AND NEW EMPLOYEES



CRAIG BARLOW

Children's Justice, Division Chief

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**UNCOMPENSATED ACTIVITIES OUTSIDE WORK –
WHEN CAN YOU CALL IT “WORK”?**

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PRO BONO ACTIVITIES – WHAT ABOUT SUPPORT STAFF?

I. PRO BONO ACTIVITIES

- A. POLICY
- B. IMPLICATIONS AND APPLICATIONS
- C. EXAMPLES
- D. THE ROLE OF OTHERS

II. INCIDENTAL USE

- A. WHAT IS IT?
- B. WHAT IS INCIDENTAL?
- C. PHONE, COMPUTER, SUPPLIES, TIME
- D. BEWARE OF COINCIDENCES!
- E. EXAMPLES

III. UNCOMPENSATED ACTIVITIES NEITHER WORK NOR PLAY

- A. SCHOOLS
- B. CIVIC GROUPS
- C. RELIGIOUS GROUPS
- D. POLITICAL GROUPS
- E. CHARITABLE GROUPS
- F. BUSINESS GROUPS

THE GOLDEN MEAN

“I get gold, what does it mean?”

The Golden Mean
(Greeks)

Doctrine of the Mean
(Confucius)

Middle Way
(Buddhist)

THE GREEKS

- Symmetry
- Proportion
- Harmony

JONI J. JONES

Litigation Division, Civil Rights Section Chief
Chair of Attorney General's Ethics Committee

Conflict Rule specific to government attorneys (newly enacted change to Utah Rule of Professional Conduct

- Rule 1.10 Imputation of Conflicts of Interest: General Rule.
- (f) An office of government lawyers who serve as counsel to a governmental entity such as the office of the Utah Attorney General, the United States Attorney, or a district, county, or city attorney does not constitute a “firm” for purposes of Rule 1.10 conflict imputation.

[5] This Rule does not prohibit communication with a represented person or an employee or agent of such a person where the subject of the communication is outside the scope of the representation. For example, the existence of a controversy between a government agency and a private party, between two organizations, between individuals or between an organization and an individual does not prohibit a lawyer for either from communicating with nonlawyer representatives of the other regarding a separate matter. Nor does the Rule prohibit government lawyers from communicating with a represented person about a matter that does not pertain to the subject matter of the representation but is related to the investigation, undercover or overt, of ongoing unlawful conduct. Moreover, this Rule does not prohibit a lawyer from communicating with a person to determine if the person in fact is represented by counsel concerning the subject matter that the lawyer wishes to discuss with that person.

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CONFLICT SCREENS

AG POLICY MANUAL

2.35 Conflict Screens

A. DISCLOSURE

This policy governs conflicts and client confidences as defined in the Judicial Council Rules of Judicial Administration, Chapter 13, Rules of Professional Conduct, including, as applicable, rules 1.6, 1.7, 1.8, 1.9, 1.11 and 5.3. An employee of the office shall promptly disclose to his or her supervisor any facts that could reasonably be seen as creating a conflict of interest within the Office.

B. ESTABLISHING CONFLICT SCREENS

Conflict screens shall be established as necessary to protect against real or potential conflicts of interest. A conflict may involve any client, witness, employee, volunteer, or unpaid intern. The relevant Division Chief in consultation with the Attorney General or Chief Deputy shall determine whether a conflict screen is necessary. The Office Ethics and Conflicts Committee may also be consulted.

C. CONSTRUCTION OF CONFLICT SCREENS

A conflict screen is constructed by: (1) giving notice within the Office; and (2) sequestering physical and electronic files related to the screened matter. The relevant Division Chief shall give notice of the conflict screen by email to all affected attorneys and staff, attaching a memorandum substantially in the form provided by the Office (see hyperlink below). The Office's Information Services shall archive a copy of the email and any responses in both the email program and a generic format outside the email program. The attorney with primary responsibility for the screened matter(s) shall ensure that the relevant files are sequestered as described in the memorandum.

Gardner v. Garner 383 Fed. Appx. 722, 727 (2010)

And even that appearance of impropriety is greatly attenuated by the fact that the AG set up an internal ethical screen between lawyers providing advice to the Board and lawyers handling the adversarial aspect of Mr. Gardner's commutation proceedings. Mr. Gardner complains that it appears this screen was not erected until a week after he filed his petition for commutation (though before the AG filed its response to the petition), but the alleged contacts between Ms. Young and the Board that he points to all occurred after that, following the pre-hearing conference. Moreover, Ms. Young averred that she had been alerted about Mr. Gardner's imminent commutation application the day before it was even filed and, as a result, had thereafter "acted as if a formal conflict screen had been established." Declaration of Michelle Young at 2-3. Under the circumstances, we see no basis for an actionable due process claim under the minimal constitutional standard applicable in the clemency context.

[For inter-divisional conflicts]
OFFICE OF THE ATTORNEY GENERAL
INTERNAL MEMORANDUM

TO: Mark Shurtleff; Kirk Torgensen; John Swallow; Laura Dupaix;
Scott Reed; the Criminal Appeals Division; the Criminal Division; and
Rose Jensen.

FROM: Thomas Bruner

RE: Ronnie Lee Gardner

DATE: May 11, 2010

The purpose of this memorandum is to establish a conflict screen for Executive Division supervision of line attorneys for the pending Ronnie Lee Gardner commutation proceedings. The attorneys from the Criminal Appeals Division and the attorneys from the Criminal Division who represent Department of Corrections shall report directly to the Utah Attorney General Mark Shurtleff. Attorneys from the Criminal Division who represent the Board of Pardons and Paroles shall report to Chief Deputy John Swallow.

Chief Deputy Kirk Torgensen normally supervises all attorneys involved in the commutation process. This screen is being established so that no Executive Division supervisor will be advising both the Board of Pardons and Paroles and any party appearing before it in the Gardner commutation proceeding. Also) Chief Deputy Torgensen served as a student intern on Gardner's defense team during the original trial.

In order to maintain an effective screen, please implement the following procedures immediately:

- **Communication Forbidden.** Attorneys representing the State and DOC will not communicate with attorneys representing the Board except to the extent that communications would clearly be permissible with a tribunal or opposing counsel. Members of the screened divisions may consult with AG Information Services for purposes of establishing an effective electronic screen.
- **Sequestration of Physical Files.** Each screened division shall keep its physical files relating to the matter confidential from other employees of the Office, including the Attorney General. The attorney with primary responsibility for the matter in each division shall ensure that that divisions files are stored in either (1) locked file drawers, provided no one outside the screened division has access to the keys; or (2) a location physically separated from other Office employees, as in another employees locked private office.
- **Sequestration of Computer Files.** Each screened division shall keep its computer files relating to the matter confidential from other employees of the Office, including the Attorney General. The attorney with primary responsibility for the matter in each division shall direct AG Information Services to ensure, and AG Information Services shall ensure, that employees outside that division are denied visibility and access rights (sometimes referred to as a read/write access to any electronic file containing non-public information. AG Information Services shall comply with this request. Employees with rights to screened files shall lock their workstations or log out when leaving their computers unattended under circumstances where a screened employee could access the files.
- **Notification.** Copies of this memorandum shall be (1) attached to the inside cover of every physical file relating to the matter, and (2) distributed by electronic mail to AG Information Services and to every employee in the Office; and (3) sent by electronic or ordinary mail to any affected state agency. AG Information Services shall archive the email it receives.

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The Role of the Attorney General's Office Ethics Committee

- WHO IS ON THE COMMITTEE AND WHAT IT DOES

- MUST GET APPROVAL FROM THE COMMITTEE BEFORE FILING FOR RULE 11 SANCTIONS

- OTHER ISSUES THE COMMITTEE REVIEWS

1.26 Attorney General's Ethics Committee

A. The Ethics Committee shall consist of the Division Chief of each Division in the Office, or the Division Chief's designee, and the Attorney General's Chief Deputy. If the Attorney General has a civil and criminal chief deputy, then the civil chief deputy serves on the Ethics Committee. The Chief Deputy shall select a chair of the Committee, who is responsible for calling and chairing meetings and handling inquiries from Division Chiefs. The Chief Deputy must be present and participate in any recommendation or decision the Ethics Committee makes. If the Chief Deputy has a matter that he or she must bring before the Committee, then the Chair of the Committee shall request that a member of the Attorney General's Executive staff participate in place of the Chief Deputy.

B. The Ethics Committee shall consider the following matters:

1. All motions for Rule 11 sanctions filed by the Office, prior to the motion being filed with the Court; and
2. All matters referred to the Committee by Division Chief regarding outside employment.

C. The Attorney General, Chief Deputy, General Counsel or a Division Chief may refer a matter to the Ethics Committee.

D. The Ethics Committee shall also have its own right to initiate a matter for consideration.

E. An Attorney within the Office who has an issue he or she wishes to bring before the Committee must first discuss the matter with the Division Chief. If the attorney and Division Chief cannot satisfactorily resolve the issue, the attorney or Division Chief may contact the Chair of the Ethics Committee. If the Chair believes the matter should be addressed by the Committee, then the Chair shall convene the Committee at a time when the attorney involved, and his or her Division Chief, can present the issue to the Committee for consideration.

F. The Ethics Committee may recommend or act as follows:

1. The Ethics Committee shall make a recommendation to the Chief Deputy as to whether Rule 11 sanctions are appropriate in a case in which the Office is involved.
2. The Ethics Committee may make recommendations on ethics issues which arise out of a case in the Office, but involve action taken by the attorney in his or her personal capacity, e.g., filing a bar complaint. The recommendation of the Committee in such cases is not binding, and the Committee may elect not to recommend any specific course of action.
3. The Ethics Committee may make other recommendations or take action as appropriate.

G. Ethics training should be conducted at least once a year for all employees of the Office.